IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA to the use and benefit of RAND CONSTRUCTION COMPANY 1428 W. 9th St. Kansas City, Missouri 64101, Plaintiff, v. BRIGADIER CONSTRUCTION SERVICES, LLC 8100 Grand Ave., Suite 200 Cleveland, Ohio 44104 [Serve: CT Corporation System Registered Agent 120 S. Central Ave. Clayton, Missouri 63105], and TRAVELERS CASUALTY & SURETY COMPANY OF AMERICA 6150 Oak Tree Blvd., Ste. # 500 Independence, Ohio 44131 [Serve: Director of Insurance 301 W. High Street, Room 530 Jefferson City, Missouri 65101], Defendants.	)	Case No.____________ JURY TRIAL REQUESTED TRIAL DESIGNATION KANSAS CITY, MISSOURI

COMPLAINT

COMES NOW Plaintiff Rand Construction Company ("**Rand**") and for its Complaint against Defendants Brigadier Construction Services, LLC ("**BCS**") and Travelers Casualty & Surety Company of America ("**Surety**") states and alleges as follows:

PARTIES

1. Rand is now and was, at all times herein mentioned, a duly organized and existing Missouri corporation with its principal office located at the address set forth in the caption.

2. BCS is now and was at all times herein mentioned an Ohio limited liability company with its principal office located at the address set forth in the caption.

3. Surety is now and was at all times herein mentioned an insurance corporation with its principal office located at the address set forth in the caption.

JURISDICTION AND VENUE

4. Pursuant to the Miller Act (40 U.S.C. § 3131, *et seq*.), this Court has jurisdiction over the subject matter in that this is an action for recovery under a Payment Bond on a federal construction project, as mentioned below, located in the Western District of Missouri, Western Division, in the State of Missouri, as hereinafter set forth.

5. Pursuant to the Miller Act (40 U.S.C. § 3131, *et seq*.), venue properly lies in this judicial district in that the claim arose out of a federal construction project located in the Western District of Missouri, Western Division, in the State of Missouri, as hereinafter set forth.

FACTS APPLICABLE TO ALL COUNTS

6. On or about December 14, 2012, BCS and the United States Department of Veterans Affairs a/k/a Veterans Affairs Heartland Network HealthCare System (the "**VA**") entered into Contract No. W912P9-12-C-0423 for the construction of certain improvements to the Veterans Administration Medical Center – Renovations located at 4801 Linwood Blvd., Kansas City, Missouri (the "Project").

7. Rand and BCS subsequently entered into an agreement whereby Rand agreed to supply certain labor and material related to mechanical systems for the Project.

8. Rand did, in accordance with its agreement with BCS, supply such labor and material on the Project at the special instance and request of BCS.

9. The total unpaid principal charges under the agreement between BCS and Rand equals $248,967.10, and such charges are fair and reasonable.

10. Rand has fully performed all its obligations and conditions precedent to payment under its agreement with BCS, but BCS has failed to pay the balance due, in whole or part, notwithstanding frequent demand for such payment.

11. As a result of the failure of BCS to pay the above sum, BCS has materially breached its contract with Rand, and Rand is, thus, entitled to recover from BCS the full principal balance due, plus interest thereon at the highest legal rate, and all costs.

12. On or about September 17, 2012, BCS, as principal, and Surety, as surety, entered into and executed a Miller Act Payment Bond No. 105830894 (hereinafter the "**Bond**"). A true and correct copy of the Bond is attached hereto as **Exhibit "1"** and made a part hereof.

13. This Bond is to the benefit of the United States of America and to the benefit of persons, including Rand, who supplied labor and materials on the Project; and pursuant to the Miller Act, Rand is entitled to commence and maintain this action under the Bond.

14. Rand last furnished labor and material to the Project more than 90 days and less than one year prior to the filing of this action.

15. Rand is, thus, entitled to payment from BCS, as principal, and Surety, as surety, under the Bond, of the full principal balance due, plus interest thereon at the highest legal rate, in that such unpaid sum constitutes a loss under the Bond and all conditions precedent to payment under the Bond have been fully performed or otherwise satisfied.

16. In addition, Rand is entitled to prejudgment interest and attorneys' fees pursuant to the Miller Act, the federal Prompt Payment Act [31 U.S.C. § 3905(b)(1)-(2)] and the Missouri Prompt Payment Act (R.S.Mo. § 431.180) in that the amount claimed is of a liquidated amount.

17. In addition, Surety failed to acknowledge the claim within 15 days and resolve the claim within 30 days as required pursuant to Missouri Insurance Regulations (20 C.S.R. §§ 100-1.040 and 1.050) and Surety has refused without just cause or excuse to pay the balance due plus interest, and, thus, Rand is also entitled to recover reasonable attorneys' fees and interest pursuant to R.S.Mo §§ 375.296 and 375.420.

18. In addition, Surety has failed to investigate and make timely payment of the claim or provide a written explanation of the basis for denial of the claim and for that reason Surety is estopped to deny Rand's claims.

COUNT I - BREACH OF CONTRACT

COMES NOW Rand and for Count I of its Complaint against BCS states and alleges as follows:

19. Rand hereby restates, realleges and fully incorporates paragraphs 1 through 18 of the Complaint as though fully set out here.

20. Rand and BCS entered into an agreement.

21. Rand performed all its obligations under the parties' agreement and all conditions precedent to the obligation of BCS to make payment to Rand have been satisfied.

22. BCS failed to make payments due to Rand.

23. The principal balance of $248,967.10 has been due and owing to Rand since the completion of its work on the Project.

24. Although demands have been made for payment of said sum, BCS has failed and refused and continues to fail and refuse to pay Rand the same.

25. As a result of the breach of the contract by BCS, Rand has been damaged in the principal amount of $248,967.10.

COUNT II - QUANTUM MERUIT

COMES NOW Rand and for Count II of its Complaint against BCS states and alleges as follows:

26. Rand hereby restates, realleges and fully incorporates paragraphs 1 through 25 of this Complaint as though fully set out here.

27. Rand furnished the aforesaid labor and materials and construction services to BCS and Rand had a reasonable expectation of being compensated for providing this labor and materials, and Rand did in fact rely on representations that Rand would be paid for this labor and materials.

28. BCS has accepted and benefited from the aforesaid materials, labor and services provided by Rand and is therefore responsible for paying the reasonable value of the materials, labor and construction services provided by Rand.

29. As a result of the failure and refusal of BCS to pay the reasonable value of the materials, labor and construction services provided by Rand, Rand has been damaged in the amount equal the principal amount of $248,967.10.

COUNT III – ACCOUNT

COMES NOW Rand and for Count III of its Complaint against BCS states and alleges as follows:

30. Rand hereby restates, realleges and fully incorporates by reference paragraphs 1 through 29 of this Complaint as if fully set forth here.

31. Rand furnished the aforesaid labor and materials and construction services to BCS at the special insistence and request of BCS.

32. The reasonable value of the aforesaid labor and materials and construction services is $248,967.10 after all just credits and allowances.

33. Rand made demands on BCS for payment, but BCS has failed, refused and neglected to make payment.

COUNT IV - STATUTORY BOND

COMES NOW Rand and for Count IV of its Complaint against BCS and Surety states and alleges as follows:

34. Rand hereby restates, realleges and fully incorporates paragraphs 1 through 33 of this Complaint as though fully set out here.

35. BCS and Surety executed the Bond in connection with the Project.

36. Surety is obligated to pay Rand the sum due to Rand from BCS upon the failure of BCS to pay all sums due and owing to Rand by BCS under their agreement in connection with the Project.

37. Rand has properly performed all of its obligations to BCS under their agreement, and Rand is entitled to full payment for its work from BCS in the principal amount of $248,967.10.

38. Rand has often demanded payment from BCS, but BCS has failed and refused to pay such amount to Rand.

39. Surety, under the terms of the Bond, and by reason of the failure of BCS to pay Rand is also indebted to Rand in the sum of $248,967.10 and has failed to pay such sum to Rand.

40. All conditions precedent to the obligation of Surety to pay Rand under the Bond have been fully performed or otherwise satisfied.

41. The refusal of Surety on the demand by Rand to pay Rand the balance due under the Bond is wholly without just cause or legal excuse, is vexatious and contumacious by reason of which Rand is entitled, under the provisions of R.S.Mo. §§ 375.296 and 375.420 to recover from Surety, in addition to the principal amount due plus interest, statutory penalties damages in an amount equal to 20% of the first One Thousand Five Hundred and No/100 Dollars ($1,500.00) of this loss and 10% of the amount of this loss in excess of One Thousand Five Hundred and No/100 Dollars ($1,500.00), together with reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Rand prays judgment against Defendants BCS and Surety, jointly and severally, in the principal amount of $248,967.10, plus interest thereon at the highest legal rate, reasonable attorneys' fee and the maximum penalties set forth in the aforementioned statutes and for all costs and for such other and further relief as the Court deems just and proper.

TRIAL DESIGNATION

Plaintiff Rand designates Kansas City, Missouri as the place for trial.

JURY DEMAND

Plaintiff Rand demands a trial by jury of all issues.

Respectfully submitted,

POLSINELLI, PC

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